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account should have been calculated only from the 25th June 1844. It is a very small matter, but their Lordships think that the decree ought to be amended in that respect by deducting from the amount decreed to the respondents the excess of interest so allowed.

Their Lordships will, therefore, humbly advise Her Majesty that the decree be varied to that extent, and that the case be remanded to the High Court for the purpose of considering and determining whether the sum of Rs. 16,324-10-15, or any part thereof, should or should not be deducted from the sum decreed to the respondents, and that in all other respects the decree ought to be affirmed.

Upon the whole their Lordships think that the appellants ought to pay the costs of this appeal.

Solicitors for the appellants: Messrs. *Wrentmore* and *Swinhoe*.

Solicitors for the respondent Ramkumar Ghose: Messrs. *Oehme* and *Summerhays*.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Pontifex, Mr. Justice Morris, Mr. Justice Mitter, and Mr. Justice McDonell.

THE EMPRESS *v.* KASSIM KHAN AND THE EMPRESS *v.* MUSSAMUT DAHIA AND ANOTHER.*

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Criminal Procedure Code (Act X of 1872), ss. 118, 119—Penal Code (Act XLV of 1860), s. 191.

Neither the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure, nor the words "shall be bound to answer all questions" in s. 119 of the same Code, constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code.

* Full Bench References made by Mr. Justice Pontifex and Mr. Justice Field, in Criminal Reference No. 36 of 1881, and by Mr. Justice Mitter and Mr. Justice Macleau, in Criminal Appeal No. 790 of 1880.

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Sections 118 and 119 are merely intended to oblige persons to give such information as they can to the police, in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.

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IN Kassim Khan's case it appeared that the accused was a witness for the prosecution in a criminal trespass case tried by the Deputy Magistrate of the Sudder Subdivision of Midnapore, and he there stated on oath that some previous information which he had given to the Police was false. The Police officer who conducted the case for the prosecution, applied for and obtained sanction to prosecute the witness under s. 193 of the Penal Code. The accused witness was tried by the Joint Magistrate, who discharged him, on the ground, that the statement made by him on oath could not be used against him as a defendant, and that there was no prospect of proving that the accused's statement to the police was actually false. The Magistrate of the District referred the case to the High Court, under s. 296 of the Code of Criminal Procedure, in order that the proceedings of the Joint Magistrate should be quashed and a retrial of the accused ordered. The reference came on before Mr. Justice Pontifex and Mr. Justice Field, who referred the matter to a Full Bench in the following terms:

"FIELD, J.—The question submitted to the Full Bench I understand to be this: Can a person be convicted under s. 193 of the Penal Code for giving false evidence, the words alleged to be false having been spoken to a Police officer engaged in making an investigation under the provisions of the Code of Criminal Procedure?

"The definition of giving false evidence (s. 191) is,—

'Whoever—

(1) being legally bound by an oath,

(2) or by any express provision of law, to state the truth, or

(3) being bound by law to make a declaration upon any subject,

makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.'

"It will probably be admitted that (3) has no application to

the present case, and that it is concerned only with that class of cases, of which the declaration to be made by a person obtaining a marriage licence is an example.

"Sections 118 and 119 of the Code of Criminal Procedure empower a Police officer making an investigation to examine persons acquainted with the facts of the case under inquiry, and enact that such persons *shall answer* all questions relating to such case, put by such officer, except criminating questions. Such answers may be reduced to writing, but they are not to be signed by the person making them, nor are they to form part of the record, or be used as evidence.

"These provisions of the Code of Criminal Procedure require the persons examined to *answer* the questions put to them, but they contain no express provision that such persons *shall state the truth*. This seems to take the case at once out of (2).

Then as to (1), can a Police officer administer an oath? The Code of Criminal Procedure does not provide for the administration of an oath by a Police officer, but does not expressly prohibit it. In the case of accused persons, an oath is expressly prohibited. It has never been usual for Police officers to administer an oath. Then were ss. 4 and 5 of The Indian Oaths Act, X of 1873, intended to alter this practice? Consider the words 'who may lawfully be examined ..... before any person having by law ..... authority to examine such persons,' in s. 5. My own view is, that the practice was *not* meant to be altered.

"If, as a matter of fact, no oath was administered by the Police officer, I think there is an end of the question.

"The accused in this case gave certain information to the Police. Before the Magistrate he swore that this information was false. The District Magistrate desired to have him punished under s. 193 of the Penal Code for giving false evidence in his statement made to the Police. It is suggested that he can be convicted on an alternative charge of giving false evidence *either* in his statement made to the Police *or* in that made to the Magistrate.

"The Joint Magistrate discharged the accused without drawing up a charge or calling upon him to plead to it, on the

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ground, as it would seem, that there was no other evidence besides these two contradictory statements. The Magistrate of the District asks us to quash the Joint Magistrate's proceedings and order a retrial.

"I do not concur with the case of *Nim Chand Mookerjee* (1). There is, as I have above pointed out, no provision of law which binds a person to state the truth in answer to a question put by a Police officer, and unless a person is legally bound by an oath or by an express provision of law to state the truth, the offence of giving false evidence cannot be committed."

"PONTIFEX, J.—I agree. The man might possibly be tried for making a false charge, or giving false information to a Public officer."

The Empress *v.* Mussamut Dahia and Chedee Dhanuk was an appeal from a judgment and sentence passed upon them by the Sessions Judge of Tirhoot. The facts of the case are set out in the Reference to the Full Bench made by Mr. Justice Mitter and Mr. Justice Maclean, the terms of which are as follows:—

"A woman of thirty years of age, called Guniya, was drowned in a well; she was the daughter of the appellant, Dahia.

"Information was given at the thana by a chowkidar on the 8th September, that Guniya had accidentally fallen into the well. The head constable enquired into the case, and the appellant, Dahia, made a statement that her daughter had fallen into the well.

"On the 12th September, the same chowkidar reported that there was a rumour that the deceased had been pushed into the well by a boy called Mahadeo; and on the 13th September, Dahia made another statement to the head constable, which is marked B on the record. In this statement she distinctly stated that she had seen Mahadeo push her daughter into the well.

"Mahadeo was sent up on a charge of murder, but it was found to be false. In those proceedings Dahia gave evidence before the Magistrate to the effect that her daughter fell into the well accidentally. Mahadeo was discharged, and proceed-

(1) 20 W. R., Cr. Rul., 41.

ings taken against Dahia and three others. They were committed on charges under s. 211, but the Judge added charges under s. 193, and, in concurrence with the assessors, has convicted Dahia and her relative Chedee under that section.

"We think it is sufficiently proved that Guniya fell into the well, and that Mahadeo did not intentionally push her in. It is also, we think, clear, that Dahia falsely told the head constable that she had seen Mahadeo push her daughter into the well. The head constable proves her statement to him. The case against the appellant Chedee is similar, except that the head constable proves only the record he made of Chedee's statement, and not the words of that statement.

"We entertain considerable doubts whether, on the facts stated above, a conviction for an offence under s. 193 of the Penal Code can be sustained. The Judge relies upon the decision of this Court in *Nim Chand Mookerjee's case* (1), in which this passage occurs at page 43:—

"'But it is not necessary under s. 194 that the false evidence which is given should be the evidence given in a Court of Justice. Section 191 provides that whoever is bound by any express provision of law to state the truth upon any subject, and makes any statement which is false, and which he knows or believes to be false, is said to give false evidence. Now, under s. 119 of the Code of Criminal Procedure, a Police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and such person shall be bound to answer all questions put to him by such officer; and it would be a complete offence of giving false evidence as defined by s. 191, taking into consideration the provisions of s. 118 of the Code, if a false statement had been made by such person.'

"As we are not prepared to follow this decision, we should be glad to have an authoritative ruling on the point, which we would put in the form of this question—

"Whether the words 'shall answer all questions' in s. 118, or the words 'shall be bound to answer all questions' in s. 119, Criminal Procedure Code, constitute an express provision of law to state the truth within the meaning of s. 191, Penal Code?"

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Mr. *G. C. Kilby* for the Crown.—Under s. 118 of the Criminal Procedure Code, the accused was bound to answer all questions put to him. If he refuses to answer, he may be punished under s. 179 of the Penal Code, and the accused cannot be said to have answered the questions put to him within the meaning of the section if he gives answers which are intentionally false. Besides, being "bound to answer" in s. 119 of the Criminal Procedure Code, must mean bound to answer truly. He is legally bound to speak the truth, and if he does not, he is punishable under s. 191 of the Penal Code. A person who gives information, or who is examined under ss. 118 and 119 of the Criminal Procedure Code, is a witness. He is called so in the marginal notes to those sections. [PONTIFEX, J.—I see no reason why he should be called so.] He is punishable under s. 193 for giving false evidence.

Cur. ad. vult.

The judgment of the Full Bench was delivered by

GARTH, C.J.—We think it plain that, neither the words "shall answer all questions" in s. 118 of the Criminal Procedure Code, nor the words "shall be bound to answer all questions" in s. 119 of the same Code, constitute "an express provision of law to state the truth" within the meaning of s. 191 of the Penal Code.

Sections 118 and 119 are, in our opinion, merely intended to oblige persons to give such information as they can to the Police in answer to questions which may be put to them, and they impose no legal obligation on those persons to speak the truth, unless we import the word "truly" in each section after the word "questions," which we clearly have no right to do.

Investigations in a Police Court are not, as a rule, conducted with the same care and accuracy as proceedings in a Court of Justice; and we think that it would be extremely dangerous to the liberty of the subject, if information thus loosely taken by a Police officer could be made the subject of a prosecution for giving false evidence.

It may be that, in some cases, the giving of false information may be made the subject of a different charge under other sections of the Penal Code; but this is a matter upon which we are not now called upon to give an opinion.